LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
JAN 26 1968
JOHN F. DAVIS, CLERK

Supreme Court of the United States

OCTOBER TERM, 1967

No. 968

BANCO NACIONAL DE CUBA,

Petitioner,

against

F. SHELTON FARR, WILLIAM F. PRESCOTT, EMMET WHITLOCK, LAWRENCE H. DIXON, H. BARTOW FARR, ELIZABETH C. PRESCOTT, FABIO FREYRE and HELEN G. DOWNS, co-partners doing business as FARR, WHITLOCK & CO.,

Respondent,

against

COMPANIA AZUCARERA VERTIENTES-CAMAGUEY DE CUBA and LEHMAN BROTHERS,

Third-Party Respondents.

MEMORANDUM OF RESPONDENT FARR, WHITLOCK & CO. IN OPPOSITION TO PETITION FOR CERTIORARI

C. DICKERMAN WILLIAMS
Counsel for Respondent Farr, Whitlock & Co.
20 Exchange Place
New York, New York 10005

Supreme Court of the United States

OCTOBER TERM, 1967

No. 968

BANCO NACIONAL DE CUBA,

Petitioner,

against

F. SHELTON FARR, WILLIAM F. PRESCOTT, EMMET WHITLOCK, LAWRENCE H. DIXON, H. BARTOW FARR, ELIZABETH C. PRESCOTT, FABIO FREYRE and HELEN G. DOWNS, co-partners doing business as FARR, WHITLOCK & CO.,

Respondent,

against

COMPANIA AZUCARERA VERTIENTES-CAMAGUEY DE CUBA and LEHMAN BROTHERS,

Third-Party Respondents.

MEMORANDUM OF RESPONDENT FARR, WHITLOCK & CO. IN OPPOSITION TO PETITION FOR CERTIORARI

On March 23, 1964 this Court reversed the decision of the United States Court of Appeals for the Second Circuit herein and remanded the case to the United States District Court for the Southern District of New York for further proceedings not inconsistent with its opinion. 376 U.S. 398.

Among other things the Court denied the motion of Compania Azucarera Vertientes-Camaguey de Cuba

("CAV") to be substituted for Receiver Sabbatino, the receivership having been terminated by the Supreme Court of the State of New York, County of Kings, on September 14, 1962. *Schwartz* v. *Compania Azucarera Vertientes-Camaguey de Cuba*, 39 Misc. 2d 63. The denial was without prejudice to renewal after the remand. 376 U.S. 407.

For reasons presently irrelevant this respondent ("Farr") thereafter moved in the District Court under Rule 14 of the Rules of Civil Procedure for leave to serve a third-party complaint against CAV and Lehman Brothers, attaching to the notice of motion a copy of the proposed complaint. J.A. 2a. The proposed complaint was based upon Farr's indemnity agreement with CAV and its escrow agreement with CAV and Lehman Brothers. These agreements are referred to in this Court's opinion at 376 U.S. 405 and 407.

This motion came on to be heard on October 30, 1964. The District Judge granted the motion and an order to that effect was entered November 12, 1964, J.A. 3a. By this time the Hickenlooper Amendment had become law, being the Act of October 7, 1964, 78 Stat. 1009.

At the hearing on October 30, 1964 counsel for Farr, CAV and Lehman Brothers spoke of their intention to move again to dismiss the complaint on the basis of the Hickenlooper Amendment, and notices of such motions were served promptly thereafter. J.A. 9a-13a.

CAV and Lehman Brothers have responded to their engagement under the indemnity and escrow agreements by prosecution of their motion to dismiss. Farr adopts their arguments that the pending petition not be granted.

The petition contains various irrelevant statements critical of Farr. Although rejecting these remarks, because of their irrelevance Farr will not presently address itself to them.

CONCLUSION

The petition should be denied.

New York, New York
January 23, 1968.

Respectfully submitted,

C. DICKERMAN WILLIAMS,
Counsel for Respondent,
FARR, WHITLOCK & Co.,
20 Exchange Place,
New York, New York 10005.